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Supreme Court of the United States

OCTOBER TERM, 1943

NO. 798

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

PETITION AND BRIEF.

For a Writ of Certiorari to the United States Circuit Court Of Appeals for the Fifth Circuit.

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PETITION

For a Writ of Certiorari to the United States Circuit Court Of Appeals for the Fifth Circuit.

The brief in support of this petition begins at page 8, all emphasis in this petition and in the following brief is supplied.

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

A Summary Statement of the Matter Involved.

There is involved the dismissal of the petitioners proceeding without action upon their amended petition filed under Section 75 (s).

The statute concerned is Section 75 of the Bankruptcy Act known as the farmer debtor law, more particularly Section 75 (s), 11 USC 203 (s).

The decision of the appellate court below is reported as *Garlington* v. *Wasson,* CCA 5, December 9, 1943, 139 Fed. (2d) 183, and it appears at R. 90 to 92. The judgment of the appellate court is at R. 93.

The final order of the district court, which was appealed, is at R. 49 to 50. There was no opinion.

Stated in a very condensed form the question involved is whether when a farmer debtor's amended petition under Section 75 (s) is duly filed the court may refuse to administer the statutory proceeding under it.

The petitioners filed their petition under Section 75 (a) to (r) for composition or extension (R. 1 to 19) without achieving either. A conditional order of dismissal was entered on October 25, 1939, with leave "to amend their petition" and proceed under Section 75 (s). R. 20 to 21. That part of the order relating to the filing of an amended petition is its last paragraph at the top of R. 21. **This is the usual course of procedure after a proposal under Section 75 (a) to (r) has failed of acceptance and the case is ready for the filing of an amended petition under Section**

75 (s). That is an order of dismissal is entered containing a proviso that an amended petition may be filed within a stated time.

The petitioners promptly filed their amended petition on the same day the conditional order of dismissal was entered. R. 21 to 39. The file mark and date is at R. 39. This petition lay dormant in the district court without adjudication and without reference to a conciliation commissioner for administration.

On January 14, 1943, the judge of the court made an order, apparently upon the court's own initiative, (later referred to as "the order of January 14, 1943") which was entered on January 22, 1943, finding, **contrary to the court's own docket** and files that no amended petition had ever been filed. R. 75, paragraph (3). It again conditionally dismissed the proceeding with leave to petitioners to file an amended petition "by the first day of February 1943", R. 76, top of page.

On February 1, 1943, the date named in that order, the farmer debtors, in deference to the finding and order of the court, but expressly adhering to their previously filed amended petition, filed another amended petition under Section 75 (s). R. 47 to 49. The file mark and date is at the middle of R. 49. The following is quoted from it:

> "They further say that on October 6th, 1939, they submitted to the conciliation Commissioner appointed by this Court **their amended petition** under said Section 75, subsection (s), **which was filed in this Court on Oct. 25, 1939, but by his order dated January 14th, 1943, the Judge of this Court found and held that no amended petition was filed herein and therefore out of caution this amended petition is filed** in compliance with the said order of January 14th, 1943, that such an amended

petition under said Section 75, Subsection (s), be filed by February 1, 1943, **nor is former amended petition under said Section 75 (s) withdrawn.**" R. 47 to 49.

On March 5, 1943, the district court entered the order appealed from. It denied the right to file the amended petition, which had already been filed in compliance with the express order of the court, stating that such petition having been "presented to the clerk, be stricken, and that this case, having been heretofore dismissed, no further proceedings be had." R. 49 to 50. **The case had not been previously dismissed.**

From this order of dismissal an appeal was taken by the petitioners. R. 50 to 51. And the appellate court affirmed the dismissal although it disagreed with the facts as found by the district court. Opinion: R. 90 to 92. Judgment: R. 93.

This petition for certiorari is to obtain a review of the judgment at R. 93 affirming the final order of the District Court at R. 49 to 50.

II.

Statement of the Basis of the Jurisdiction of this Court.

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code; 28 USC 347 (a).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 USC 350. The final judgment of the appellate court below which was entered on December 9, 1943 (R. 93) became final on January 12, 1944, when a petition for rehearing was denied. (R. 100). This petition is filed within three months thereafter. The man-

date of the Appellate Court has been stayed to March 21, 1944.

III.

The Questions Submitted.

1.

When a farmer debtor has duly filed in the bankruptcy court his amended petition under Section 75 (s) of the Bankruptcy Act, 11 USC 203 (s), and he did so pursuant to an order of the bankruptcy court, may that court dismiss his proceeding on the alleged ground that no amended petition was ever filed?

2.

When a farmer debtor has duly filed in the bankruptcy court his amended petition under Section 75 (s) of the Bankruptcy Act, 11 USC 203 (s), and he did so pursuant to an order of the Bankruptcy Court, and the Court fails to act thereon, may the proceeding be dismissed on the alleged ground that it was the duty of the farmer debtor to activate either the judge or the conciliation commissioner, and also his duty to seek appraisal, exemptions and possession, before any hearing or creditors meeting was called or held?

3.

When a bankruptcy court has neglected to act upon a farmer debtor's amended petition duly filed under Section 75 (s) in compliance with an order of the court, may the court deny the right to proceedings under it and dismiss

the cause on the ground that "the benefits of subsection (s) have been substantially enjoyed?"

IV.

Reasons Relied Upon for the Allowance of The Writ of Certiorari.

1.

The decision below is in violation of the express provisions of Section 75 (s).

2.

It is in conflict with the decision in *Wright* v. *Logan*, 1942, 315 U.S. 139 in this that, like the decisions of the lower courts in that case, it held that a farmer debtor should be deprived of the benefits of Section 75 (s) because the bankruptcy court decided that as the court had kept the proceeding before it without action the farmer debtor thereby had the substantial benefits of the statute.

3.

It is in conflict with *John Hancock* v. *Bartels*, 1939, 308 U.S. 180, which held that when a farmer debtor has duly filed his amended petition under Section 75 (s) the bankruptcy court is without power to refuse to proceed under it and dismiss the case.

4.

In holding that if a first amended petition under Section 75 (s) is ignored by the bankruptcy court a second may be denied it is in conflict with *Wragg* v. *Federal*, 1943, 317 U.S. 325.

5.

It is contrary to the universal administration of farmer debtor cases in all of the other circuits subsequent to *Wright* v. *Logan*, 1942, 315 U.S. 139, and it is an exception to the course of procedure in the same Circuit subsequent to the decision in *Wragg* v. *Federal*, 1943, 317 U.S. 325, which corrected the practice followed there.

Wherefore your petitioners pray that a writ of certiorari may issue to the Fifth Circuit Court of Appeals and that this cause may be reviewed and determined by this court and for such other relief as may be proper.

February 26, 1944
Lima, Ohio

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